

**REPORT FOR: Licensing and General
Purposes Committee**

Date of Meeting: 26 November 2012

Subject: **INFORMATION REPORT** – Changes to
Licensing Act 2003 via the Police Reform and
Social Responsibility Act 2011 and the Live
Music Bill

Responsible Officer: Caroline Bruce
Corporate Director, Environment and
Enterprise

Exempt: No

Enclosures: None

Section 1 – Summary

This Report sets out the proposed changes to the Licensing Act 2003 due to the commencement of the Police Reform and Social Responsibility Act 2011 and the Live Music Bill (royal assent pending)

FOR INFORMATION

Section 2 – Report

2.1 Background

2.11 **The Police Reform and Social Responsibility bill** included the following provisions:

- making the police service more accountable to local people by replacing police authorities with directly elected police and crime commissioners to be introduced from May 2012
- **overhauling the Licensing Act to give more powers to local authorities and police to tackle any premises that are causing problems, doubling the maximum fine for persistent underage sales and permitting local authorities to charge more for late-night licences to contribute towards the cost of policing the late-night economy**
- introducing a system of temporary bans for new psychoactive substances, so-called 'legal highs', whilst the health issues are considered by independent experts, to ensure our legislative process can respond quickly to emerging harmful substances
- restoring the right to non-violent protest around Parliament whilst ensuring that Parliament Square remains accessible to all by repealing sections 132-138 of the Serious Organised Crime and Police Act (SOCPA) 2005 and prohibiting encampments and other disruptive activity on Parliament Square
- amending the process for issuing private arrest warrants for universal jurisdiction offences to ensure that they are issued only where there is a reasonable prospect of successful prosecution

2.12 The purpose of the **Live Music Bill** is to amend the Licensing Act 2003 with respect to the performance of live music. The Bill would exempt certain types of venue, and of performance, from existing licensing requirements for the performance of live music.

As a result, it would increase the number of places and performances not subject to such licenses, in order to widen access and to encourage the performance of live music.

Key areas

- Venues authorised to supply alcohol with a capacity of less than 200 people, at which music would be performed between the hours of 8am and midnight, would no longer require a license for the performance of live music.
- Up to two performers would be able to perform live unamplified, or minimally amplified, music without the need for a license.

- Hospitals, hospital accommodation, schools and colleges would be able to host live music performances without the need for a licence.

This Report aims to provide details of the proposed changes.

2.13 The Police Reform and Social Responsibility Act 2011 (yet to be commenced)

The following areas under the Licensing Act 2003 will be modified or changed;

1. Licensing authorities as responsible authorities
2. Primary Care Trusts and Local Health Boards as responsible authorities
3. Abolition of interested parties
4. "Appropriate" replaces "necessary"
5. Late night levy
6. Early morning restriction orders
7. Temporary event notices
8. Greater penalties for persistent sale of alcohol to children
9. Fees
10. Licensing policy: shelf life
11. Alcohol Disorder Zones

2.13.1.1 Licensing authorities as responsible authorities

Licensing authorities will be able to make representations on applications

They will also be able to bring review applications and make representations on applications for review by others

2.13.2 Primary Care Trusts and Local Health Boards as responsible authorities

Primary Care Trusts and Local Health Boards become responsible authorities

- Trusts / boards will be able to make representations on applications
- They will also be able to bring review applications and make representations on applications for review by others
- Trusts / Boards can make a real contribution regarding:
 - Quantum and location of alcohol-related ambulance call outs.
 - Quantum and location of incidents resulting in A&E treatment.

- Alcohol-related harm to children.
- Cumulative impact

2.13.3 **Abolition of interested parties**

- Previously, a local person could object or apply for a review only if they lived or worked in the vicinity (or represented someone who did)
- Now, anyone will be able to object
- This will give town centre users a greater stake in its development and control

There is potential for a much wider category of objectors and review applicants, e.g.

- People who use the town centre but who do not live or work there
- Tourist organisations
- Transport police
- Civic societies / amenity groups
- Campaigners
- Trade rivals

2.13.4 “ **Appropriate**” replaces “**necessary**”

- The test for intervention in licensing has been “necessary”.
- Now it is going to be “appropriate”.
- This will apply to:
 - Applications, variations and reviews re. premises licences and club premises certificates
 - Temporary event notices
 - Personal licences

Implications:

- The Bill calls this “reducing the evidential burden”
- The theory is that the authority will have the right to intervene at a lower threshold of need
- James Brokenshire MP told the Bill Committee that it was introduced because authorities were currently taking a “defensive” (i.e. cautious) approach to intervention. A step is only “necessary” when no lesser step would suffice. A wider discretion is now intended “to enable communities to assert themselves properly”.

2.13.5 **Late night levy**

- Licensing authority may decide to impose a late night levy.
- Licensing authority must take into account:

(a) the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6 am, and

(b) having regard to those costs, the desirability of raising revenue to be applied in accordance with the statute.

- Regulations may specify other matters to be taken into account.

The levy applies to the whole area of the authority. It cannot be imposed on part of the area only.

- When authority decides to introduce levy, it must at the same time decide:
 - the date on which the late night levy requirement is first to apply;
 - the late night supply period;
 - the permitted exemption categories (if any) that are to apply in

Regulations will provide for

- ability of licensees / certificate holders to apply to vary their authorisations without charge so that they are no longer “relevant late night authorisations.”

The late night supply period which is:

- Determined by the licensing authority for the levy year but
- Which is between the hours of midnight and 6 a.m. The window must be the same on every day.

Who pays?

- The holder of a “relevant late night authorisation”.
- This is a premises licence or club premises certificate which authorises the supply of alcohol at a time or times during the late night supply period on one or more days in the related payment year.
- It is a question of what the licence permits, not whether the licence is utilised
- One day is enough. E.g. a seasonal variation permitting post-midnight supply on Bank Holidays would be enough to incur the levy.

- It does not, however, apply to TENS, so some premises can be expected to take up their full TEN entitlement to sidestep the levy.
- The levy does not apply to entertainment or late night refreshment providers.

To be set by or calculated in accordance with Regulations, but

in December 2010 the Home Office suggested levy according to rateable value:

- A £299
- B £768
- C £1259
- D £1365
- E £1,493
- D x 2 (primarily or exclusively alcohol) £2,730
- E x 3 (primarily or exclusively alcohol) £4,440
- Authority must pay at least 70% of the net levy to the police

2.13.6 **Early morning restriction orders**

- If the licensing authority considers it appropriate for the promotion of the licensing objectives
- I.e. there is a very wide discretion

What is an EMRO

- Licensing authority may select:
 - a period between midnight and 6 a.m.
 - different periods for different days of the week or year
- Licensing authority may also:
 - apply the Order to particular parts of its area
 - Limit the period for which it is to have effect (e.g. every Bank Holiday weekend and Christmas week).
- Licences and certificates are ineffective to permit supply of alcohol during those period(s)

2.13.7 **Temporary event notices**

The change

- Environmental health authority can object, in addition to the police
- Objections can relate to any licensing objective
- Conditions can be added
- Late notices can be given
- Increase in number and duration of events per premises
- Longer objection period

Power to add conditions

Conditions may be added if:

- There has been an objection.
- Authority considers it “appropriate for the promotion of the licensing objectives”
- Conditions are on a premises licence or club premises certificate for all or part of the premises
- Conditions would not be inconsistent with the carrying out of the licensable activities under the TEN.

Two types of notice

-“standard TENS”

-“late TENS”

- Standard TENS are given at least 10 working days before the event to the licensing authority and (if not electronic) to police/EH.
- Late TENS are given 5-9 working days before the event to the authority and (if not electronic) to the police/EH.
- Where notices are given electronically, authority must forward to police/EH by the next working day.

Objection to late notice

- Where there is an objection to a late TEN the authority must serve a counter-notice at least 24 hours before the event.
- I.e. the applicant who serves a late TEN takes a risk, in that police / EH may veto the event.
- There is no appeal against the veto

Limits on notices

- Government does not want late TENS to become the norm
- The limits will be:
 - Personal licensees: 50 standard or 10 late
 - Non-personal licensees: 5 standard or 2 late.

Longer TENS

- Maximum event period increased from 4 to 7 days
- Maximum per premises per year increased from 15 to 21 days

Longer period for objection

Police and EH will have 3 working days to object to notice

2.13.8 **Greater penalties for persistent sale of alcohol to children**

- Fine for persistent sale of alcohol to children increased from £10,000 to £20,000.
- Closure notices for persistently selling alcohol to children increased from 2 days to 2-14 days

2.13.9 **Fees**

The authority must suspend the licence for non-payment of annual fee for premises licence and club premises certificate

Fees and full cost recovery

- Secretary of State may make regulations empowering authorities to set their own fees, and may also set a national cap
- In setting their fees, authorities will have to seek to secure that the income from fees of that kind will equate, as nearly as possible, to the aggregate of—
 - the licensing authority's costs referable to the discharge of the function to which the fee relates (e.g. premises licence applications) [DIRECT COSTS]
 - a reasonable share of the licensing authority's general costs
- Government will issue guidance on fee-setting

2.13.10 **Licensing policy: shelf life**

- Policies beginning in January 2011 will now have a shelf life of 5 years.
- Authority may review its policy during that period. A review does not affect the shelf life.
- It may also replace its policy during that period. If it does so, the new policy will have a shelf life of 5 years from that date.

Section 3 – Further Information

It is expected some parts of the Police Reform and Social Responsibility Act 2011 will be commenced by April 2012. However the sections dealing with Late night Levy and the full cost recovery may not commence until late 2012 or even 2013. As and when these sections are commenced Officer will more details via the Council's reporting structures.

Section 4 – Financial Implications

This Report is for information only and at the time of writing the Report there were not enough information available to make an assessment as to the Financial Implications. Once the Regulations are published another report will be presented to all relevant committees with a full financial and resource implications.

Section 5 - Equalities implications

An Impact assessment will be carried out before any adoption of any parts of the legislation or changes to the fee structure.

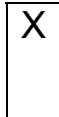
Section 6 – Corporate Priorities

Please identify which corporate priority the report incorporates and how:

- Keeping neighbourhoods clean, green and safe.

- Supporting our town centre, our local shopping centres and businesses.

Name: Jennifer Hydari
Divisional Director Finance and
Procurement



on behalf of the
Chief Financial Officer

Date: 23 Feb 2012

Section 7 - Contact Details and Background Papers

Contact: P Sivashankar, Service Manager, Licensing, Housing & Support Services, Tel: 020 8736 6237, Email: shankar@harrow.gov.uk

Background Papers: Relevant Acts/Bills, Presentation By Kolvin QC